No. 87-1075

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1987

MICHAEL L. SHAKMAN and PAUL M. LURIE, *et al.*,
Petitioners,

v.

GEORGE W. DUNNE, President of the Board of Commissioners of Cook County, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONERS' REPLY BRIEF

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The Brief in Opposition seeks to characterize this case as one concerning patronage practices whose electoral sting has been long removed by a consent decree forbidding political *firings*. This wholly misstates the case.

The case before the Court for review arises from a 1985 district court judgment with respect to respondents' politically conditioned *hiring* practices. That judgment was based on respondents' own admissions that their patronage hiring practices give candidates of the Cook County regular

Democratic organization a substantial electoral advantage over disfavored candidates and voters.[1] Significantly, those admissions were made years after entry of the 1972 consent decree forbidding political firings. Thus, respondents themselves admit that the injury to the rights of independent candidates and voters caused by the patronage hiring system was not eliminated by the earlier consent decree as to political discharges.

Respondents' admissions concerning the scope and effect of their patronage hiring system have, moreover, not been withdrawn or modified. The record in the case thus remains particularly straightforward. Respondents do not dispute that they continue to base hiring on active political support of the regular Democratic organization. Nor do they deny that their purpose in doing so is to provide an electioneering advantage for their officially favored candidates.[2]

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[1] The district court found, based on admissions and stipulations made *after* the 1972 *firing* consent decree, that the patronage *hiring* practices in issue produced a "substantial, perhaps massive, political effort" for regular Democratic organization candidates and against independent candidates and voters. [Appendix, 78a, n.18]. It also found that:

> [t]he patronage employment system described above helps regular Democrats win elections. It provides a significant advantage in Chicago and in Cook County, Illinois, to candidates supported by the regular Democratic organization and a corresponding disadvantage to opposing candidates, including independent candidates.... [Appendix, 149a-150a].

Respondents admit that this is one of the purposes of their patronage hiring system. [Appendix, 98a].

[2] The only significant change which has occurred in defendants' hiring practices has been as a result of consent decrees entered in this case barring political hiring by certain other defendants, including the City of Chicago. Significantly, however, the City (which has 40,000 employees) now has moved to vacate

(Footnote continued on the following page)

In any event, for standing purposes the allegations of the complaint as to injury must be taken as true. Here the allegations in the complaint set forth in detail the injury to independent voters and candidates from defendants' patronage employment system. Those allegations of injury were repeated in petitioners' motion for summary judgment and thus plainly apply to the hiring claims.

The Brief in Opposition argues that disfavored candidates and voters do not have standing to challenge politically conditioned hiring, no matter how extensive it may be or how much of an impact it may have on political competition, because any such effect is said to be "speculative". This is, respondents argue, because no one is "required" to give political support to favored candidates, or to refrain from giving support to disfavored candidates.

This argument also is contrary to the record. Respondents specifically admit that active political support for favored candidates is required to get jobs. [Appendix, 136a, 148a] And persons who do get the jobs must continue to give political support if they want job advancement. Moreover, as is specifically admitted:

> Usually no person is recommended by a member of the regular Democratic organization for a public employment position if he or she has in any open way been a worker or partisan of any political group opposed to or by the Cook County Democratic Organization. . . . [Appendix, 93a]

The unconstitutional burden which this pervasive system of political hiring imposes upon independent candidates and voters is neither "attenuated" nor "speculative." The State directly and substantially burdens the ability of

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2 *(Continued)*

that decree on the basis of the court of appeals' opinion as to which review is sought. This development further emphasizes the importance of the matter before the Court.

disfavored candidates to attract support by excluding their supporters from an opportunity for employment.

The electioneering support which the system produces for the State's officially favored candidates does not depend on "independent" decisions of other persons. Political support is *required* in order to get a job or, having one, to get a better one.

The effects of respondents' patronage hiring system are thus clear and direct. It produces a substantial disadvantage to disfavored candidates and voters, directly traceable to the practices in issue. That is the whole point of respondents' politically conditioned hiring system–to use the State's resources to give the incumbent faction an electioneering advantage, and correspondingly to disadvantage disfavored candidates and voters. This is precisely the kind of direct injury that article III courts must be permitted to scrutinize if they are to serve their historic function of protecting the democratic process from unconstitutional abuses by those in control of the State.

The Brief in Opposition submits that the decision of the court of appeals is not appropriate for review because, having been decided on standing, the decision does not present issues of importance. This is by no means the case. The decision would bar disfavored candidates and voters, as a matter of law, from pleading and proving injury to their constitutional rights caused by politically conditioned hiring practices. This would be the case no matter how extensive such practices are, or the extent to which they impair political competition. The decision of the court of appeals is in essence a ruling that disfavored candidates and voters have no constitutional rights which can be abridged by such a system. The ruling on standing *is* the ruling on the substantive constitutional claims of candidates and voters. It is thus a decision of substantial importance to the free functioning of the political process.

A writ of certiorari should issue for the decision to be reviewed by this Court.

Respectfully submitted,

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